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TIMOTHY D. MARTIN
8 and JT REALTY INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
12

13 TIMOTHY D. MARTIN, an individual;
and JT REALTY INC., a California
14 corporation.

15 Plaintiffs,

16 v.

17 RONALD SNYDER, an individual;
BENEFIT STRATEGIES GROUP,
18 LLC, a Utah limited liability company;
and DOES 1 through 20, inclusive,
19

20 Defendants.

Case No.

**COMPLAINT FOR ACTIONS
ARISING UNDER THE
EMPLOYEE RETIREMENT
INCOME SECURITY ACT**

Trial Date: None Set

1 Plaintiffs Timothy D. Martin (“Martin”) and JT Realty Inc. (“JT Realty”)
2 (Martin and JT Realty are collectively referred to herein as “Plaintiffs”), by and
3 through their undersigned attorneys, file this Complaint against Defendants Ronald
4 Snyder (“Snyder”), Benefit Strategies Group, LLC, (“BSG”) and DOES 1-20
5 (collectively, “Defendants”), as follows:

6 **THE PARTIES**

7 1. Martin is a resident of San Mateo County, California. During the
8 relevant time period, Martin was a participant, as defined by § 3(7) of the Employee
9 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1002(7), in the
10 Benefits for Corporate America Inc. Supplemental Executive Retirement Plan and
11 later in the Benefits for Corporate America Inc. Deferred Compensation Plan.

12 2. JT Realty is a California corporation with its headquarters in Alameda
13 County, California. JT Realty conducts business throughout the State of California,
14 including the district where this action is filed.

15 3. Snyder is a resident of Salt Lake County, Utah.

16 4. BSG is a Utah limited liability company. BSG conducts business in the
17 State of California, including the district where the action is filed. Snyder is the
18 President of BSG and the Managing Member.

19 **JURISDICTION AND VENUE**

20 5. **Subject Matter Jurisdiction.** This Court has subject matter
21 jurisdiction over Plaintiffs’ claims pursuant to ERISA § 502(e) and (f), 29 U.S.C.
22 § 1132(e) and (f), and 28 U.S.C. § 1331.

23 6. **Personal Jurisdiction.** ERISA provides for nation-wide service of
24 process pursuant to ERISA § 502, 29 U.S.C. § 1132. All Defendants are either
25 residents of the United States or subject to service in the United States, and this
26 Court therefore has personal jurisdiction over them. Jurisdiction is proper over BSG
27 because it transacted business in the State of California, contracted to supply
28 services in the State of California, and caused injury within the State of California,

1 as more specifically described herein.

2 7. **Venue.** An action may be brought in the district court where the plan is
 3 administered, where the breach took place, or where a defendant resides or may be
 4 found. Venue lies within the Central District of California pursuant to 29 U.S.C.
 5 § 1132(e)(2) and Local Rule 83-1.3, because the breaches and patterns of fiduciary
 6 misconduct alleged herein are related to the breaches alleged in *Larry Gliko et al. v.*
 7 *Ronald Snyder et al.*, Case No. 8:22-cv-00145-DOC-KES.

8 **STATEMENT OF FACTS**

9 **A. Benefits for Corporate America Inc. Supplemental Executive Retirement** 10 **Plan**

11 8. The Benefits for Corporate America Inc. Supplemental Executive
 12 Retirement Plan (the “SERP”) was established by Benefits for Corporate America,
 13 Inc. (“BCA”), a Nevada corporation.

14 9. BCA was the “Plan Sponsor” and BSG was the “Administrator” of the
 15 SERP at the time it was established and during the SERP’s operation.

16 10. To begin participating in the SERP, TM Realty, Inc. (a predecessor
 17 entity to JT Realty) was provided a Co- Employment and Adoption Agreement. On
 18 or about December 27, 2006, the Board of Directors of TM Realty, Inc. adopted the
 19 SERP.

20 11. The SERP contains the following key provision:

21 a. **11.1 Non-Alienation of Benefits** – Other than as provided in
 22 Section 7.9, no benefit under the Plan shall be subject in any manner to anticipation,
 23 alienation, sale, transfer, assignment, pledge, encumbrance, or charge and any such
 24 action shall be void for all purposes of the Plan. No benefit shall in any manner be
 25 subject to the debts, contracts, liabilities, engagements, or torts of any person, nor
 26 shall it be subject to attachments or other legal process for or against any person,
 27 except to such extent as may be required by law.

28 12. In conjunction with the SERP, BCA established the Benefits for

1 Corporate America, Inc. Rabbi Trust (the “Rabbi Trust”) effective as of January 1,
2 2005.

3 13. The purpose of the Rabbi Trust is to accept and hold contributions
4 made to the SERP and make distributions to participants of the SERP.

5 14. The Rabbi Trust contains the following key provision:

6 a. **13.1** – Benefits payable to Participants and their beneficiaries
7 under this Agreement may not be anticipated, assigned (either at law or in equity),
8 alienated, pledged, encumbered, or subjected to attachment, garnishment, levy,
9 execution or other legal or equitable process.

10 **B. Establishment of the Benefits for Corporate America, Inc. Deferred**
11 **Compensation Plan**

12 15. At some point in 2013, BCA amended and restated the SERP pursuant
13 to a new deferred compensation plan called the Benefits for Corporate America, Inc.
14 Deferred Compensation Plan (the “DC Plan”), effective as of January 1, 2013.

15 16. Upon information and belief, the DC Plan constitutes a funded deferred
16 compensation plan.

17 17. Upon information and belief, the DC Plan does not meet the
18 requirements of being an ERISA “top-hat” plan because the DC Plan is not an
19 unfunded plan.

20 18. JT Realty was a “Participating Employer” under the terms of the DC
21 Plan.

22 19. BSG was named as the “Administrator” of the DC Plan within the
23 meaning of ERISA Section 3(16)(A), 29 U.S.C. § 1002(16)(A) and 29 C.F.R. §
24 2510.3-16.

25 20. Under the terms of the DC Plan, BSG designated the investment funds
26 for the DC Plan.

27 21. BCA is the “Plan Sponsor” of the DC Plan.

28 22. An amended and restated trust called the Benefits for Corporate

1 America, Inc. Deferred Compensation Trust Amended and Restated Trust
2 Agreement (the “Amended Trust”), was established in conjunction with the DC
3 Plan, effective as of December 15, 2014.

4 23. The purpose of the Amended Trust is holding and investing
5 contributions made to the DC Plan and earnings thereon.

6 24. Under the terms of the Amended Trust, BSG was the “Administrative
7 Trustee” of the trust.

8 25. Under the terms of the Amended Trust, BSG, as the Administrative
9 Trustee, was charged with the duty to invest and reinvest the assets of the trust.

10 26. As the Managing Member of BSG, Snyder made all decisions on behalf
11 of BSG concerning the administration of the DC Plan and Amended Trust and the
12 investment of the assets of the DC Plan and Amended Trust.

13 **C. Imprudent investment of DC Plan and Amended Trust Assets and**
14 **Failure of Snyder and BSG to Pay Benefits Owed to Plaintiffs**

15 27. Snyder and BSG exercised discretionary authority and control with
16 respect to the administration of the DC Plan and Amended Trust and the
17 management, investment, and disposition of the assets of the DC Plan and Amended
18 Trust.

19 28. As a result of, and in the course of, exercising such control over the
20 assets of the DC Plan and Amended Trust, Snyder and BSG were acting as
21 “fiduciaries” of the DC Plan and Amended Trust within the meaning of Section
22 3(21)(A), 29 U.S.C. § 1002(21)(A).

23 29. On information and belief, Snyder and BSG also acted as investment
24 fiduciaries of the DC Plan and Amended Trust under ERISA Section 3(21) as a
25 result of receiving compensation for the provision of investment advice with respect
26 to the DC Plan and/or the Amended Trust.

27 30. As of December 31, 2020, the DC Plan and Amended Trust held assets
28 for the benefit of Martin and JT Realty in the amount of \$2,168,359.95.

31. On or before December 28, 2020, Martin requested the payment of benefits to him from the DC Plan and Amended Trust.

32. On or before December 29, 2020, Snyder acknowledged in writing to Martin the request for payment of benefits.

33. On or before August 10, 2021, Snyder stated in writing to Martin that there was a delay in receiving expected funds and that the check in payment of Martin's benefits had not been mailed but that it would be sent.

34. On or about January 22, 2022, Snyder and BSG prepared a memorandum to participants of the DC Plan regarding the status of the plan and the Amended Trust.

35. In the memorandum, Snyder and BSG make the following statements/representations: (1) that “the amount of assets presently in the trust are insufficient to pay all expected benefits under the plan”; (2) Snyder and BSG intend to “shut down the trust and distribute all benefits to participants”; and (3) Snyder and BSG “do not anticipate making distributions from the trust until the Committee determines the priority of claims to be paid.”

36. Based on the memorandum, upon information and belief, Plaintiffs allege that Snyder and BSG intend to use some or all of the funds held in the trust to pay benefits owed to participants other than Plaintiffs.

37. Based on the memorandum, upon information and belief, Plaintiffs allege that Snyder and BSG intend to create a “Committee” with the power and authority to distribute the funds held in the trust to pay benefits owed to participants other than Plaintiffs.

FIRST CLAIM FOR RELIEF

For Benefits Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)

Against Snyder and BSG

38. Plaintiffs incorporate by reference the above paragraphs as though they were fully set forth herein.

1 39. Martin was a participant in the DC Plan within the meaning of ERISA.

2 40. BSG and Snyder acted as the DC Plan Administrator within the
3 meaning of ERISA.

4 41. BSG and Snyder exercised discretionary authority and control with
5 respect to the administration of the DC Plan and Amended Trust and the
6 management, investment, and disposition of the DC Plan's assets, including
7 determining how such assets were to be invested.

8 42. As a result of, and in the course of, exercising such control over the DC
9 Plan's assets, Snyder and BSG were acting as "fiduciaries" of the DC Plan and
10 Amended Trust within the meaning of Section 3(21)(A), 29 U.S.C. § 1002(21)(A).

11 43. ERISA § 404(a), 29 U.S.C. § 1104(a)(1) required Snyder and BSG,
12 when acting in their capacity as fiduciaries of the DC Plan, to act with respect to the
13 DC Plan for the exclusive benefit of the DC Plan's participants with a high level of
14 skill, prudence, and diligence, and to diversify the DC Plan's assets to minimize the
15 risk of large losses.

16 44. Therefore, Snyder and BSG violated the terms of the DC Plan and their
17 ERISA fiduciary duties to Martin by failing to pay Martin benefits owing under the
18 DC Plan.

19 45. As a direct and proximate cause of the fiduciary breaches and ERISA
20 violations, Plaintiffs are entitled to all such relief as available under ERISA.

21 46. Pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), Plaintiffs
22 request an award against Snyder and BSG of Plaintiffs' reasonable attorneys' fees
23 and costs.

24 **SECOND CLAIM FOR RELIEF**

25 **Claim for Relief Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2)**

26 **Against Snyder, BSG, and DOES 1-10**

27 47. Plaintiffs incorporate by reference the above paragraphs as though they
28 were fully set forth herein.

1 48. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), allows civil actions by
2 participants and beneficiaries for relief for breaches of ERISA fiduciary provisions
3 under ERISA § 409, 29 U.S.C. § 1109.

4 49. Consequently, this language permits benefit plan participants and
5 beneficiaries to argue that the plan suffered losses due to alleged fiduciary duty
6 breaches.

7 50. In the present case, BSG and Snyder served as the Administrative
8 Trustee of the Amended Trust and Administrator of the DC Plan.

9 51. BSG and Snyder exercised discretionary authority and control with
10 respect to the administration of the DC Plan and Amended Trust and the
11 management, investment, and disposition of the DC Plan's assets, including
12 determining how such assets were to be invested.

13 52. As a result of, and in the course of, exercising such control over the DC
14 Plan's assets, Snyder and BSG were acting as "fiduciaries" of the DC Plan and
15 Amended Trust within the meaning of Section 3(21)(A), 29 U.S.C. § 1002(21)(A).

16 53. BSG and Snyder invested the assets of the DC Plan and the Amended
17 Trust in an imprudent manner such that the amount of assets presently in the
18 Amended Trust are insufficient to pay all benefits due under the DC Plan.

19 54. By imprudently investing the assets of the DC Plan and Amended
20 Trust, Snyder and BSG breached their fiduciary duty under ERISA and are liable
21 under ERISA §§ 502(a)(2) and 409.

22 55. For this claim, Plaintiffs seek to recover, on behalf of the DC Plan, all
23 losses sustained by the DC Plan based on the improper investment of plan assets.

24 56. Pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), Plaintiffs
25 request an award against Snyder and BSG of Plaintiffs' reasonable attorneys' fees
26 and costs.

THIRD CLAIM FOR RELIEF

Claim for Relief Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)

Against Snyder, BSG, and DOES 1-10

57. Plaintiffs incorporate by reference the above paragraphs as though they were fully set forth herein.

58. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), provides that a participant may bring a civil action to “(A) enjoin an act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan. 29 U.S.C. § 1132(a)(3).

59. A participant “can pursue the remedy that will put the [participant] in the position he or she would have attained but for the trustee’s breach.” *Skinner v. Northrop Grumman Ret. Plan B*, 673 F.3d 1162, 1167 (9th Cir. 2012).

60. At all relevant times, Snyder and BSG were fiduciaries with respect to the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

61. Snyder and BSG owe certain duties to plan participants and beneficiaries under ERISA. Among the duties, ERISA imposes both a duty of loyalty and a duty of care. *See* 29 U.S.C. § 1104(a)(1).

62. The duty of care compels a fiduciary to act “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent [person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B).

63. Snyder and BSG violated the terms of the DC Plan and ERISA by imprudently investing the assets of DC Plan in such a manner that the amount of assets presently in the Amended Trust are insufficient to pay all benefits due under the DC Plan and Snyder and BSG have failed to pay Martin the benefits owing to him under the DC Plan.

1 funds held in the Amended Trust.

2 7. Pre- and post-judgment interest, as afforded by law;

3 8. Award Plaintiffs reasonable attorneys' fees and costs of suit incurred
4 herein pursuant to ERISA § 502(g), 29 U.S.C. §1132(g); and

5 9. Such other equitable and remedial relief as is appropriate.

6
7 DATED: June 13, 2022

MEYERS NAVE

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9
10 By: /s/ Janice P. Brown

JANICE P. BROWN

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14 TIMOTHY D. MARTIN

15 and JT REALTY INC.
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